

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES A. TRUCKEY,

CASE NO. 1:20-CV-02222

Petitioner,

JUDGE PAMELA A. BARKER

-vs-

**MAGISTRATE JUDGE
KATHLEEN B. BURKE**

**ASHTABULA COUNTY PROBATION
DEPARTMENT,**

**MEMORANDUM OF OPINION AND
ORDER**

Respondent.

On October 1, 2020, Petitioner James A. Truckey (“Petitioner”) filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (Doc. No. 1.) On November 4, 2020, Respondent Ashtabula County Probation Department (“Respondent”) filed a Motion to Dismiss the Petition. (Doc. No. 5.) Petitioner did not respond to the Motion to Dismiss, and, on December 29, 2020, Magistrate Judge Kathleen B. Burke issued a Report & Recommendation, which recommends granting Respondent’s Motion to Dismiss. (Doc. No. 6.)

Subsequently, on January 20, 2021, Petitioner filed a Notice of Voluntary Dismissal in which Petitioner moves to voluntarily dismiss his Petition, acknowledging that his “release from supervision renders his claim ineligible for Habeas Corpus challenge.” (Doc. No. 7.) In his Notice of Voluntary Dismissal, Petitioner does not identify the specific rule he relies on in support of his request that his Petition be voluntarily dismissed, but his request appears to have been made pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). Under that rule, courts have allowed petitioners to voluntarily dismiss an action even though the respondent has filed a motion to dismiss. *Pena v. Turner*, No. 3:15CV1151, 2016 WL 482071, at *4 (N.D. Ohio Feb. 5, 2016) (“Respondent has not filed an answer or a motion for

summary judgment. Instead, Respondent filed a Motion to Dismiss, which does not prevent a voluntary dismissal under Rule 41(a)(1)(A).”); *Aleman v. Hudson*, No. 1:07 CV 739, 2008 WL 821091, at *1 (N.D. Ohio Mar. 25, 2008) (“Although Respondent filed a Motion to Dismiss, that does not defeat a voluntar[y] dismissal under Federal Civil Rule 41(a)(1).”). Respondent also has not opposed Petitioner’s request for voluntary dismissal.

Accordingly, Petitioner’s request in his Notice of Voluntary Dismissal (Doc. No. 7) to voluntarily dismiss his Petition is GRANTED, and Respondent’s Motion to Dismiss (Doc. No. 5) is DENIED AS MOOT.

IT IS SO ORDERED.

Date: February 22, 2021

s/Pamela A. Barker
PAMELA A. BARKER
U. S. DISTRICT JUDGE